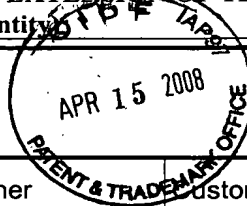


COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. 1.136(a) (Large Entity)

Docket No.
FJ-2003-018-US

In Re Application Of: Masahiro Terada



| Application No. | Filing Date | Examiner | Customer No. | Group Art Unit | Confirmation No. |
|-----------------|--------------------|-----------------|--------------|----------------|------------------|
| 10/669,801 | September 25, 2003 | Wanda M. Negron | 21254 | 2622 | 8163 |

Invention: IMAGE EDITING APPARATUS, IMAGE EDITING PROGRAM, AND IMAGE EDITING METHOD

COMMISSIONER FOR PATENTS:

This is a combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief.

Applicant(s) hereby request(s) an extension of time of (check desired time period):

☒ One month ☐ Two months ☐ Three months ☐ Four months ☐ Five months

from: January 15, 2008 until: April 15, 2008
Date Date

The fee for the Appeal Brief and Extension of Time has been calculated as shown below:

Fee for Appeal Brief: \$510.00

Fee for Extension of Time: \$120.00

TOTAL FEE FOR APPEAL BRIEF AND EXTENSION OF TIME: \$630.00

The fee for the Appeal Brief and extension of time is to be paid as follows:

☒ A check in the amount of \$630.00 for the Appeal Brief and extension of time is enclosed.

☐ Please charge Deposit Account No. in the amount of

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☒ Any additional filing fees required under 37 C.F.R. 1.16.

☐ Any patent application processing fees under 37 CFR 1.17.

☐ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No.

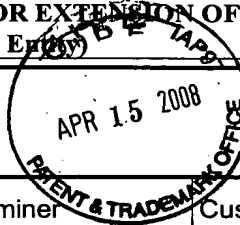
☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME
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Invention: **IMAGE EDITING APPARATUS, IMAGE EDITING PROGRAM, AND IMAGE EDITING METHOD**

TO THE COMMISSIONER FOR PATENTS:

This combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:

Signature

Dated: **April 15, 2008**

Phillip E. Miller, Esq.
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Vienna, VA 22182

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Masahiro Terada

Serial No.: 10/669,801

Group Art Unit: 2622

Filed: September 25, 2003

Examiner: Wanda M. Negron

For: IMAGE EDITING APPARATUS, IMAGE EDITING PROGRAM, AND IMAGE
EDITING METHOD

Honorable Commissioner of Patents
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellant respectfully appeals the final rejection of claims 1-18 in the Office Action dated August 9, 2007. A Notice of Appeal was filed herein on January 15, 2008 (with a Petition and Fee for Three Month Extension of Time.

I. REAL PARTY IN INTEREST

The real party in interest is Fujifilm Corporation, assignee of 100% interest of the above-referenced patent application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant, Appellant's legal representative or Assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

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III. STATUS OF CLAIMS

Claims 1-18 are all the claims presently pending in the application and are set forth fully in the attached Appendix A.

Claims 1-5, 9, 11, 13, 17 and 18 stand rejected under 35 U.S.C. § 102(e) as being allegedly unpatentable over Kellock et al. (U. S. Patent Pub. No. 2004/0027369). Claims 6-8, 10, 12 and 14-16 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kellock.

Appellant respectfully appeals these rejections.

IV. STATEMENT OF AFTER-FINAL AMENDMENTS

Appellant notes that an after-final Amendment was filed on December 10, 2007. The only claim amendment made was a minor amendment to claim 12 to address the Examiner's objection thereto.

In an Advisory Action dated December 28, 2007, the Examiner alleged that the after-final Amendment "does NOT place the application in condition for allowance". However, the Examiner indicated that the Amendment would be entered for purposes of appeal.

A Notice of Appeal was filed herein on January 15, 2008 (with a Petition and Fee for Three Month Extension of Time).

V. SUMMARY OF THE INVENTION

Appellant's invention, as defined by **independent claim 1** is directed to an image editing apparatus which joins a plurality of images in time. The apparatus includes a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name, a video effect recording device which records image related information associated with a video effect during image switching, a comparison device which reads first image related information about a

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first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first and second images, a video effect selection device which reads from the video effect recording device a video effect according to matching image related information between the image related information about the first and second images as a result of the comparison, and an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time (Application at Figures 4 and 5, page 11, line 7-page 13, line 2). The Apparatus also includes an output device which outputs the joined images.

Appellant's invention, as defined by **independent claim 2** is directed to an image editing apparatus which joins a plurality of images in time, including a recording medium loading unit which loads a recording device for recording a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name, a video effect recording device which records a range of image related information associated with a video effect during image switching, a comparison device which reads first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first and second images, a video effect selection device which reads from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison, an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time (Application at Figures 4 and 5, page 11, line 7-page 13, line 2), and an output device which outputs the joined images.

Appellant's invention, as defined by **independent claim 3** is directed to an image editing

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apparatus which joins a plurality of images in time, including a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name, a video effect recording device which records a range of image related information associated with a video effect during image switching, a comparison device which reads first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first and second images, a video effect selection device which reads from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison, an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time (Application at Figures 4 and 5, page 11, line 7-page 13, line 2), and an output device which outputs the joined images.

Appellant's invention, as defined by **independent claim 4** is directed to A programmable storage medium tangibly embodying a program of machine-readable instructions executable by a digital processing apparatus to perform an image editing method, said method including in an image editing apparatus having a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name, a video effect recording device which records a range of image related information associated with a video effect during image switching, a comparison device which compares image related information about a first image with image related information about a second image, a video effect selection device which reads from the video effect recording device a video effect depending on a comparison result, an image joining device which joins a first image with a second image by applying the video effect to the first and second images, an output device which outputs the joined images, and an information processing

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device which controls the recording device, the video effect recording device, the comparison device, the video effect selection device, the image joining device, and the output device: reading in the comparison device first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and comparing the image related information about the first and second images, reading in the video effect selection device from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison, reading the first and second images recorded in the recording device, and automatically joining in the image joining device the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time (Application at Figures 4 and 5, page 11, line 7-page 13, line 2), and outputting in the output device the joined images.

Appellant's invention, as defined by **independent claim 5** is directed to an image editing method, including in an image editing apparatus having a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name, a video effect recording device which records a range of image related information associated with a video effect during image switching, a comparison device which compares image related information about a first image with image related information about a second image, a video effect selection device which reads from the video effect recording device a video effect depending on a comparison result, an image joining device which joins a first image with a second image by applying the video effect to the first and second images, and an output device which outputs the joined images: reading first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and comparing the image related information about the first and second images, in the comparison device, reading in the video effect selection device from the video effect recording device a video effect according to image related information similar in a predetermined range

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between the image related information about the first and second images as a result of the comparison, reading the first and second images recorded in the recording device, and automatically joining the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time, in the image joining device (Application at Figures 4 and 5, page 11, line 7-page 13, line 2), and outputting in the output device the joined images.

A conventional image editing apparatus requires a user to select a video effect to be used in joining images (Application at page 2, lines 11-31).

The claimed invention, on the other hand, may include a video effect selection device which reads from the video effect recording device a video effect according to matching image related information between the image related information about the first and second images as a result of the comparison, and an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time (Application at Figures 4 and 5; page 11, line 7-page 13, line 2). These features help to allow the claimed invention to select a video effect such that it may not be necessary for a user to set a video effect during image switching (Application at page 12, lines 9-12; page 12, line 31-page 13, line 2).

VI. ISSUES PRESENTED FOR REVIEW

The issues presented for review by the Board of Patent Appeals and Interferences include:

- 1) whether claims 1-5, 9, 11, 13, 17 and 18 are not patentable under 35 U.S.C. § 102(e) over Kellock et al. (U. S. Patent Pub. No. 2004/0027369) as alleged by the Examiner; and
- 2) whether claims 6-8, 10, 12 and 14-16 are not patentable under 35 U.S.C. § 103(a) over Kellock, as alleged by the Examiner.

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VII. ARGUMENT

A. The Examiner's Position

In the Office Action dated August 9, 2007, the Examiner rejects claims 1-5, 9, 11, 13, 17 and 18 under 35 U.S.C. 102(e) as being allegedly anticipated by Kellock et al. (US Pre-Grant Publication 200410027369 A1), stating (emphasis added):

6. *Regarding claim 1, Kellock et al. disclose an image editing apparatus, i.e. an editing system (see Abstract), comprising a recording device, i.e. a disk or non-volatile memory (see paragraph [0061]), which records a plurality of images, i.e. video segments (101), associated with image related information, i.e. video descriptors (111), including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name (see paragraphs [0056] and [0062]); a video effect recording device, i.e. style information (106) which would be inherently stored in a memory device in order for the editing system to make use of it, which records image related information associated with a video effect during image switching, i.e. transition effects parameters and their input-dependent values (see paragraphs [0101] and [0102]); a comparison device, i.e. a constructor (121), which reads first image related information about a first image, e.g. a first video segment descriptor of low brightness (see paragraph [0106], lines 10-13), recorded in the recording device and second image related information about a second image, e.g. a second video segment descriptor of low brightness (see paragraph [0106], lines 10-13), recorded in the recording device, and compares the image related information about the first and second images, e.g. verifies that the low brightness shooting condition is satisfied by both segments (see paragraph [0106], lines 10-13); a video effect selection device, i.e. a constructor (121), which reads from the video effect recording device a video effect according to matching image related information between the image related information about the first and second images as a result of the comparison, e.g. determining the use of slow dissolve transitions when the video segments to be edited satisfy a low brightness condition (see paragraph [0106], lines 10-13); an image joining device, i.e. a renderer (123), which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time, e.g. automatically (see paragraph [0090]) concatenates a first and a second video segment of low brightness with slow dissolve transitions (see paragraph [0106], lines 10-13); and an output device, i.e. an audio-visual monitor (see paragraph [0075], lines 7-9), which outputs the joined images, i.e. an output production (108).*

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7. Claim 2 has limitations similar to those treated in the above rejection of claim 1, and those limitations are met by Kellock et al. as discussed above. In addition, claim 2 recites the following limitations also anticipated by Kellock et al.: a recording medium loading unit which loads the recording device, i.e. an inherent means for importing embedded descriptors to the editing device (see paragraph [0062], lines 1-10), and the use of a range of image related information instead of matching image related information, e.g. the use of an indirect matching with derived descriptors (see paragraph [0171], lines 6-9, and paragraph [0172], lines 5-8) instead of identical type descriptors.

8. Claim 3 has limitations similar to those treated in the above rejection of claim 1, and those limitations are met by Kellock et al. as discussed above. In addition, claim 3 recites the following limitation also anticipated by Kellock et al: the use of a range of image related information instead of matching image related information, e.g. the use of an indirect matching with derived descriptors (see paragraph [0171], lines 6-9, and paragraph [0172], lines 5-8) instead of identical type descriptors.

9. Claim 4 is drawn to an image editing program for performing the operation process or steps corresponding to the apparatus claimed in claim 3, said apparatus also comprising an information processing device for controlling and synchronizing the operation of the recording device, the video effect recording device, the comparison device, the video effect selection device, the image joining device, and the output device. Claim 4 corresponds to apparatus claim 3 and is rejected for the same reasons of anticipation as used above, since it would have been inherent that a processing unit would have been required in order to operate both, the editing apparatus claimed in claim 3, and the editing system disclosed by Kellock et al.

10. Method claim 5 is drawn to the method of using the corresponding apparatus claimed in claim 3. Therefore, method claim 5 corresponds to apparatus claim 3 and is rejected for the same reasons of anticipation as used above.

11. Regarding claim 9, Kellock et al. teach that said video effect selection device further reads from the video effect recording device: a video effect according to image related information similar in a predetermined range when there is image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison; and a video effect according to no matching image

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related information when there is no matching image related information between the image related information about the first and second images as a result of the comparison. For example, Kellock et al. teach using slow dissolves transitions for segments of low brightness, and other type of transition for segments of high brightness (see paragraph [106]).

12. *Regarding claim 11, Kellock et al. disclose an input device, i.e. a GUI, for selecting images to be edited from among said plurality of images (see paragraphs [0190], [0195]).*

13. *Regarding claim 13, Kellock et al. teach that the style information recorded in a recording medium comprises a table including a list of said image related information, e.g. image brightness level, and a video effect associated with said image related information, e.g. transition effect type (e.g., see table 1 on page 7).*

14. *Regarding claim 17, Kellock et al. teach that said image joining device joins said images by automatically applying said video effect during image switching, i.e. applying a transitional effect within a media timeline wherein a first image is ending and a second image is beginning (e.g., see figure 2).*

15. *Regarding claim 18, Kellock et al. teach that said image-editing apparatus comprises one of an electronic camera, a personal computer, and a personal digital assistant (PDA) (see paragraph [0020] and [0288]).*

In the Office Action dated August 9, 2007, the Examiner rejected claims 6-8, 10, 12 and 14-16 under 35 U.S.C. 103(a) as being allegedly unpatentable over Kellock et al. (US Pre-Grant Publication 200410027369 A1), stating:

18. *Regarding claim 6, as mentioned in the discussion of claim 1 above, Kellock et al. teach all the limitations of the parent claim. Official notice is taken that the concept of having an image file including at least one of a primary image of a moving picture in an image recording format, a thumbnail image for listing a primary image, and image related information about a primary image is well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have an image file including at least a thumbnail for representing a primary image because it would be easier and faster for the user to recognize the video segment.*

19. *Regarding claim 7, Kellock et al. disclose that the video*

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descriptors 111 embedded within or linked to the input video or image comprise at least a shooting date and time, a focal distance, and a GPS location (see paragraph [0062]).

20. *Regarding claim 8, official notice is taken that recording still and motion images using JPEG and MPEG formats, respectively, is old and well known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use JPEG and MPEG compression formats because they are ISO/IEC standards and, therefore, implementation is known to be effective.*

21. *Regarding claim 10, as mentioned in the discussion of claim 1 above, Kellock et al. teach all the limitations of the parent claim. Kellock et al. also disclose that the invention may be embodied within a computer, a PDA, a still camera and a video camera (see paragraph [0020]). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a mode switch for putting said image editing apparatus in an image editing mode because, since computers, PDAs, still cameras and video cameras operate in modes other than image editing modes, any of these embodiments would require a way to change modes to operate as an image editor.*

22. *Regarding claim 12, Kellock et al. disclose a display device, i.e. an audio-visual monitor (see paragraph [0075], lines 7-9). Kellock et al., however, do not explicitly teach displaying a list of images, wherein a user using said display device selects plural images from said displayed list of images to be edited. Official notice is taken that selecting plural images from a displayed list of images is well-known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to display a list of images, wherein a user using selects plural images from said displayed list of images because the user herself can select the images she would like to edit, minimizing unnecessary or unwanted editions.*

23. *Regarding claim 14, as mentioned in the discussion of claims 1 and 2 above, Kellock et al. teach all the limitations of the parent claim. Kellock et al., however, fail to explicitly teach that said image related information is included in said list in order of priority. Official notice is taken that prioritizing recorded image related information is well-known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to prioritize recorded image related information by user preference because it would increase the success of the editing process since the user's preferences are*

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taken into account.

24. *Regarding claims 15 and 16, Kellock et al. fail to explicitly teach that said comparison device compares first image related information for said first and second images, wherein if said first image related information for said first image matches said first image information for said second image, said video effect selection device selects said video effect associated with said first image related information and terminates a video effect selection process, and wherein if said first image related information for said first image does not match said first image information for said second image, said comparison device compares second image related information for said first and second images.*

Official notice is taken that prioritizing recorded image related information is well-known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to prioritize recorded image related information by user preference and selecting a video effect on the basis of said prioritization because it would increase the success of the editing process since the user's preferences are taken into account.

In the Office Action dated August 9, 2007, the Examiner attempted to respond to Appellant's arguments, stating:

Applicant submits on page 12 that the Kellock reference does not teach or suggest an image-joining device, which, inter alia, automatically joins images by applying a video effect read by a video effect selection device. Furthermore, on page 13, Applicant alleges that the renderer 123 and the style information taught by Kellock are unreasonably equated with the image-joining device and the "video effect" of the claimed invention, respectively. The Examiner respectfully disagrees.

26. *The Kellock reference discloses in the abstract an editing system for automatically "editing input data to generate an output production". Furthermore, the Kellock reference discloses in the last sentence of paragraph [0010] that one of the goals of the Kellock invention is to reduce the production time to playback duration ratio "through automation, to the point where in some cases acceptable results can be produced without any user intervention". In addition, paragraph [0090] teaches that the invention "creates an output production automatically by making the decisions itself", where an output production is "a piece of time-based media such as a video, animation, or timed*

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sequence of images" subjected to one or more processes (see paragraph [0047]). These processes include "transformation", in which the elements of the input material may be transformed using "special effects" (see paragraph [0051]), and "combination", in which images are "concatenated with overlaps allowing the use of transitions such as dissolves and wipes" (see paragraph [0052]).

In view of the teachings mentioned above, it is clear that the Kellock reference does teach an image-joining device that automatically joins images by applying a video effect read by a video effect selection device.

27. *As per Applicant's allegation that the renderer 123 interprets "Music Support Group (MSG) data as instructions", the Examiner submits that Kellock et al. in paragraph [0090] teach that the constructor decides which process to apply to the image input data, "while the renderer [123] performs the actual processing". In other words, the renderer interprets the "media scene graph" (MSG) constructed by constructor 121 (see paragraph [0072]), and performs the actual editing of the input media (e.g. see figure 2) applying processes such as "transformation", in which the elements of the input material may be transformed using "special effects" (see paragraph [0051]), and "combination", in which images are "concatenated with overlaps allowing the use of transitions such as dissolves and wipes" (see paragraph [0052]).*

After editing is completed, the renderer 123 transfers the output production, e.g. an edited sequence of images including transition video effects, to an output file or to a display for user review. Therefore, it is completely reasonable to equate the image-joining device of the claimed invention with the renderer 123 taught by Kellock et al.

28. *Regarding Applicant's allegation that equating the style information in Kellock with the "video effect" of the claimed invention is "completely unreasonable", the Examiner submits that, in paragraph [0101], the Kellock reference discloses "combination parameters" as an example of parameters included in the style information. The "combination parameters" include well-known video effects as dissolve/wipe transitions. Therefore, it is completely reasonable to equate the "video effect" of the claimed invention with the style information taught by Kellock et al.*

In the Advisory Action dated December 27, 2007, the Examiner alleged that Appellant's argument in the after-final Amendment were not persuasive, stating:

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Applicant argues on pages 12 and 13 that the "style information" of Kellock is not necessarily stored in a memory device. The Examiner respectfully disagrees. Kellock discloses in paragraph [0044] that the "style information" is "data or logic used by the system to control or influence aspects of the automatic construction process". Since the construction process is computer-based (see paragraph [0013]), it clearly follows that the "style information" has to be stored in a memory device in order for it to be processed by the computer's processor. Those ordinarily skilled artisans in the relevant art will recognize that, even assuming, arguendo, that the "style information" is being generated in real time by the user, which is not, since one of the goals of the invention is to produce edited material without any user intervention (see paragraph [0010]), a buffer memory is conventionally used to temporarily store data in order to compensate for differences in data rate and data flow.

Applicant argues on pages 13 and 14 that Kellock does not teach or reasonably suggest comparing image related info about first and second images or reading a video effect from a recording device according to matching image related information as a result of the comparison. The Examiner respectfully disagrees. Kellock, in paragraph [0106], discloses an example where images, i. e. first and second images, are concatenated using slow dissolves, Le. a video effect, on the basis of the images brightness, Le. a comparison of whether or not both images comply with a low brightness condition, which is considered image related information. In addition, as discussed above, the construction process is computer-based, which would require to process data permanently or temporarily stored on a memory device, e.g. data or logic for selecting and reproducing a video effect, in order to concatenate images.

Applicant also argues on page 14 that Kellock fails to teach an image joining device which "reads the first and second images in the recorded device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time". The Examiner respectfully disagrees. Kellock discloses that, in order to automatically create an output production (see paragraph [0090]), the constructor first determines "upon the style information and the nature of the input" (see paragraph [0092]), "which processes to apply and where to apply them", while the renderer "performs the actual processing (see paragraph [0090]). Therefore, in the example disclosed in paragraph [0106], the constructor would determine which style to apply in order to edit low brightness images, while the renderer performs the actual editing, Le. joins at least two

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images with low brightness characteristics using a slow dissolve video effect.

Regarding Applicant's argument that "the "style information" in Kellock has nothing to do with the video effect in the claimed invention", the Examiner maintains that Kellock discloses that the "style information" includes the "transformation parameters", e.g. flash effects, animation of graphic elements, text, etc., and the "combination parameters", e.g. cuts, dissolves, wipes, etc. (see paragraphs [0100] and [0101]), which comprise well-known video effects.

Applicant's traversal of the Official notice statements set forth on pages 15 and 16 of Applicant's response is acknowledged. In response, the Examiner submits that, should Applicant file for an appeal, paragraphs [0016], [0052] and figure 17 of Itoh et al. (US Application Publication No. 2001/0016108) and figure 6 in Misawa et al. (US Application Publication No. 2002/0118285 A 1) would be presented as evidence of what is well-known in the art.

B. Appellant's Position

1. Claim Construction

To ascertain the true meaning of a given claim in the patent, resort should be made to the claims at issue, the specification, the other claims of the patent, and the prosecution history. See, e.g., Uniroyal, Inc. v. Rudkin-Wiley Corp., 5 U.S.P.Q.2d 1434, 1441 (Fed. Cir. 1988).

In determining the scope of claim limitations, words in a claim are given their ordinary and accustomed meaning unless it appears that the inventor used them differently. Envirotech Corp. v. Al George, Inc., 730 F.2d 753, 221 U.S.P.Q. 473 (Fed. Cir. 1984) at 477. Because the meaning of words or phrases in the claims may be ambiguous, that is, words or phrases may have several different meanings or may be defined in a particular way by the patentee or may have a particular meaning in the art, the meaning of such terms and the construction of a claim may be in dispute.

In such cases, resort to extrinsic evidence may be required and a determination of claim construction in such cases may involve an examination of the patent specification, the prosecution history and extrinsic evidence such as expert testimony and literature in the relevant art. Fromson v. Advance Offset Plate Inc., 219 U.S.P.Q. at 1140-1142 (Fed. Cir. 1983). The

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terms are best construed in the light of the specification and the circumstances involving the prosecution of the patent. Envirotech Corp., supra, at 478.

Appellant submits that the claims and written specification are clear and unambiguous and subject to little interpretation. Specifically, it is clear that **the specification describes in detail all of the elements and limitations of the claims.**

2. The Prior Art Rejections of the Independent Claims

The Examiner alleges that Kellock teaches the invention of claims 1-5, 9, 11, 13, 17 and 18, and makes obvious the invention of claims 6-8, 10, 12 and 14-16. Appellant submits, however, that there are features of the claimed invention that are not taught or suggested by Kellock.

a. Independent Claim 1: Comparison of claim 1 to Kellock

Claim 1 recites as follows:

*"An image editing apparatus which joins a plurality of images in time, comprising:
a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name;*

a video effect recording device which records image related information associated with a video effect during image switching;

a comparison device which reads first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first and second images;

a video effect selection device which reads from the video effect recording device a video effect according to matching image related information between the image related information about the first and second images as a result of the comparison;

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an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time; and an output device which outputs the joined images."

Therefore, as noted above, the claimed invention as recited in claim 1 is directed to an image editing apparatus which includes a video effect selection device which reads from the video effect recording device a video effect according to matching image related information between the image related information about the first and second images as a result of the comparison, and an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time. Appellant respectfully submits that these features are not taught or suggested by Kellock as alleged by the Examiner.

i. The Rejection is Erroneous as a Matter of Law

The Examiner's rejection is erroneous as a matter of law.

Specifically, 35 U. S. C. §103(a) states:

"[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made".

Generally, there are several well known statements on the requirements of establishing obviousness. For example, it has been stated that the factual inquiries which must precede a

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legal conclusion on obviousness are the determination of the scope and content of the prior art, the differences between the claimed invention and the prior art, the level of ordinary skill in the art, and objective evidence of nonobviousness, such as commercial success, long-felt but unsolved needs which the invention has satisfied, failure of others to make the claimed invention, copying of the alleged invention, and unexpected results brought about by the invention. DMI, Inc. vs. Deere & Col., 231 U. S. P. Q. 276 (Fed. Cir. 1986).

It has been further stated that “[t]he consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art” In re Dow Chem. Co., 837 F.2d 469, 473 (Fed. Cir. 1988).

Clearly, the Examiner has failed to show that each and every element as set forth in claim 1 is taught or suggested by Kellock. For example, the Examiner has failed to show that Kellock teaches or suggests *"a video effect selection device which reads from the video effect recording device a video effect according to matching image related information between the image related information about the first and second images as a result of the comparison" and "an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time"*, as recited in claim 1.

In view of all of the foregoing, Appellant respectfully submits that the Examiner's rejection is erroneous as a matter of law. Thus, the Board is respectfully requested to remove this rejection of claim 1.

ii. The Rejection is Erroneous as a Matter of Fact

Further, the Examiner's rejection is erroneous as a matter of fact.

Kellock discloses an editing system in which the style of editing is controlled using style data which is optionally derived from a user (Kellock at Abstract). Specifically, Kellock discloses a process of editing input material which may include "segmentation (of video/audio),

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selective inclusion, sequencing, transformation and combination" (Kellock at [0017]).

However, Appellant submits that Kellock does not teach or suggest "*a video effect selection device which reads from the video effect recording device a video effect according to matching image related information between the image related information about the first and second images as a result of the comparison*" and "*an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time*", as recited, for example, in claim 1 (Application at Figures 4 and 5; page 11, line 7-page 12, line 12). As noted above, this feature helps to allow the claimed invention to select a video effect such that it may not be necessary for a user to set a video effect during image switching (Application at page 12, lines 9-12).

Clearly, this feature is not taught or suggested by Kellock. Indeed, Kellock is completely unrelated to the claimed invention.

Recording Device

First, the Examiner alleges that Kellock teaches the recording device of the claimed invention, but does not specify what feature in Kellock is the equivalent to the "recording device" of the claimed invention. Indeed, the Examiner simply alleges that the "recording device" is disclosed by a "disk or non-volatile memory (see paragraph [0061])".

However, nowhere in paragraph [0061] or anywhere else does Kellock teach or suggest a "disk or non-volatile memory" that records a plurality of images **associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name**. Indeed, the Examiner surprisingly attempts to equate the video description [111] in Kellock with the "image related information" in the claimed invention. However, even assuming (arguendo) that the video description [111] may somehow be equated with the image related information of the claimed invention, nowhere does Kellock teach or suggest a recording device records a plurality of images "associated with" the video description

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[111]. Therefore, the Examiner's position is completely unreasonable.

Video Effect Recording Device

Second, the Examiner surprisingly attempts to equate the "style information (106)" in Kellock with the video effect recording device of the claimed invention. However, the "style information (106)" is simply "data or logic used by the system to control or influence aspects of the automatic construction process- in other words the 'editing style'" (Kellock at [0044]). That is, the Examiner is attempting to equate some "data" in Kellock with the video effect recording device of the claimed invention. Of course, this is nonsense.

Indeed, in the claimed invention, the video effect recording device records image related information associated with a video effect during image switching. It is silly to suggest that data (e.g., "style information 106") could possibly perform this function. Therefore, the Examiner's position is completely unreasonable.

Further, Appellant would point out that the style information in Kellock is unrelated to the "video effect" of the claimed invention. Indeed, Figures 4 and 5 in the present Application provide examples of video effects (e.g., semitransparent composition, embossment effect, dot fade, etc.) according to an exemplary aspect of the claimed invention.

However, in Kellock, the style information is "created by a style designer, for example, by a process of manually defining a set of values for parameters, and the aim of the style designer is to create styles which will cause the system to generate high-quality output productions" (Kellock at [0096]). Kellock gives as examples of "style information", segmentation parameters, selective inclusion parameters, sequencing rules, transformation parameters and combination parameters (Kellock at [0097]-[0101]). Thus, clearly the style information in Kellock has nothing to do with the video effect in the claimed invention.

Comparison Device

Third, the Examiner surprisingly attempts to equate the constructor [121] in Kellock with

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the comparison device of the claimed invention. However, Kellock simply describes the constructor [121] by stating that "[i]t receives as input the one or more media descriptions and receives (or contains within it) the style information [105]" and stores a media scene graph (MSG) which is "a complete representation of the form of the output production or as a complete set of instructions for making the output production" (Kellock at [0072]).

That is, nowhere does Kellock teach or suggest that the constructor [121] reads first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first and second images. Indeed, the Examiner alleges that this is disclosed at lines 10-13 of paragraph [0106] in Kellock, but nowhere does paragraph [0106] teach or suggest comparing anything, let alone image related information about first and second images.

Indeed, the Examiner makes the cryptic comment that "verifies that the low brightness shooting condition is satisfied by both segments". Assuming arguendo that this is disclosed in paragraph [0106] (**which it is not**), nowhere does the Examiner indicate what it is that is allegedly doing the verifying in paragraph [0106], and nowhere does the Examiner explain what "verifying a low brightness shooting condition" has to do with comparing image related information about first and second images. Therefore, again, the Examiner's position is completely unreasonable.

Video Effect Selection Device

Fourth, the Examiner surprisingly attempts to equate the constructor 121 also with the video effect selection device of the claimed invention. However, nowhere does Kellock teach or suggest that the constructor 121 reads a video effect from a recording device according to matching image related information as a result of the comparison.

In fact, Kellock teaches simply that the constructor stores a specification of the output production in a media scene graph (MSG) which includes a set of instructions for making the

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output production including source and timing of all elements of the input material and the types of transformations and special effects applied to these elements (Kellock at [0072]). Kellock teaches that "[a] central function of the constructor is to select and sequence the elements of the input material" and provides a flowchart in Figure 5 which is followed by the constructor 121 (Kellock at [0111]-[0115]).

However, nowhere in these passages or Figure 5, or any where else does Kellock teach or suggest that the constructor reads a video effect from a recording device according to **matching image related information as a result of comparing image related information about first and second images**. Indeed, the Examiner surprisingly refers again to paragraph [0106] and attempts to support her position with another cryptic comment: "determining the use of slow dissolve transitions when the video segments to be edited satisfy a low brightness condition". However, even assuming (arguendo) that such a feature is disclosed in paragraph [0106] in Kellock (**which it is not**), Appellant submits that simply determining the use of slow dissolve transitions does not teach or suggest reading a video effect from a recording device according to **matching image related information as a result of comparing image related information about first and second images**. Indeed, the Examiner is being completely unreasonable.

Image Joining Device

Fifth, the Examiner **again surprisingly** attempts to equate the renderer 123 in Kellock with the image joining device of the claimed invention. This also is completely unreasonable.

Kellock simply teaches that the renderer 123 interprets Media Scene Graph (MSG) data as instructions and selects elements of the input material, applies processes such as sequencing, transformation, combination and concatenation to the selections, and transfers or copies them to an output such as a file or an audio-visual monitor (Kellock at [0075]). That is, nowhere does Kellock teach or suggest that the renderer 123 reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time.

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Indeed, the Examiner attempts to support her position by referring again to paragraph [0106] in Kellock and stating "automatically (see paragraph [0090]) concatenates a first and second video segment of low brightness with slow dissolve transitions". However, even assuming (arguendo) that such a feature is disclosed in paragraph [0106] in Kellock (**which it is not**), Appellant submits that simply concatenating a first and second video segment does not teach or suggest reading first and second images recorded in a recording device, and automatically joining the images by applying a video effect read by the video effect selection device to a portion in which the images are to be joined in time.

Therefore, Appellant submits that there are features of the claimed invention that are not taught or suggested by Kellock.

In view of all of the foregoing, Appellant respectfully submits that the Examiner's rejection is erroneous as a matter of fact and law. Thus, the Board is respectfully requested to remove this rejection of claim 1.

b. Independent Claim 2: Comparison of Claim 2 with Kellock

Claim 2 recites as follows:

*"An image editing apparatus which joins a plurality of images in time, comprising:
a recording medium loading unit which loads a recording device for recording a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name;*

a video effect recording device which records a range of image related information associated with a video effect during image switching;

a comparison device which reads first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first

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and second images;

a video effect selection device which reads from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison;

an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time; and

an output device which outputs the joined images."

Similarly to claim 1, claim 2 recites "a video effect selection device which reads from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison" and "an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time".

Appellant notes, that these elements are similar to the elements discussed above in claim 1. Therefore, the arguments set forth above with respect to claim 1 are incorporated herein by reference.

As discussed above with respect to claim 1, Kellock does not teach or suggest these elements of claim 2.

Therefore, as in claim 1, even if claim 2 is given the broadest reasonable interpretation, there is at least one element in claim 2 that is not found, either expressly or inherently, in the cited reference.

In view of all of the foregoing, Appellant respectfully submits that the Examiner's rejection is erroneous as a matter of fact and law. Thus, the Board is respectfully requested to remove this rejection of claim 2.

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c. Independent Claim 3: Comparison of Claim 3 with Kellock

Claim 3 recites as follows:

*"An image editing apparatus which joins a plurality of images in time, comprising:
a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name;*

a video effect recording device which records a range of image related information associated with a video effect during image switching;

a comparison device which reads first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first and second images;

a video effect selection device which reads from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison;

an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time; and

an output device which outputs the joined images."

Similarly to claim 1, claim 3 recites "a video effect selection device which reads from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison" and "an image joining device which reads the first and second

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images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time”.

Appellant notes, therefore, that these elements are similar to the elements discussed above with respect to claim 1. Therefore, the arguments set forth above with respect to claim 1 are incorporated herein by reference.

As discussed above with respect to claim 1, Kellock does not teach or suggest these elements of claim 3.

Therefore, as in claim 1, even if claim 3 is given the broadest reasonable interpretation, there is at least one element in claim 3 that is not found, either expressly or inherently, in the cited reference.

In view of all of the foregoing, Appellant respectfully submits that the Examiner’s rejection is erroneous as a matter of fact and law. Thus, the Board is respectfully requested to remove this rejection of claim 3.

d. Independent Claim 4: Comparison of Claim 4 with Kellock

Claim 4 recites as follows:

" A programmable storage medium tangibly embodying a program of machine-readable instructions executable by a digital processing apparatus to perform an image editing method, said method comprising:

in an image editing apparatus having a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name, a video effect recording device which records a range of image related information associated with a video effect during image switching, a comparison device which compares image related information about a first image

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with image related information about a second image, a video effect selection device which reads from the video effect recording device a video effect depending on a comparison result, an image joining device which joins a first image with a second image by applying the video effect to the first and second images, an output device which outputs the joined images, and an information processing device which controls the recording device, the video effect recording device, the comparison device, the video effect selection device, the image joining device, and the output device:

reading in the comparison device first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and comparing the image related information about the first and second images;

reading in the video effect selection device from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison;

reading the first and second images recorded in the recording device, and automatically joining in the image joining device the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time; and

outputting in the output device the joined images."

Similarly to claim 1, claim 4 recites "reading in the video effect selection device from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison" and "reading the first and second images recorded in the recording device, and automatically joining in the image joining device the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined

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in time”.

Appellant notes, therefore, that these elements are similar to the elements discussed above with respect to claim 1. Therefore, the arguments set forth above with respect to claim 1 are incorporated herein by reference.

As discussed above with respect to claim 1, Kellock does not teach or suggest these elements of claim 4.

Therefore, as in claim 1, even if claim 4 is given the broadest reasonable interpretation, there is at least one element in claim 4 that is not found, either expressly or inherently, in the cited reference.

In view of all of the foregoing, Appellant respectfully submits that the Examiner’s rejection is erroneous as a matter of fact and law. Thus, the Board is respectfully requested to remove this rejection of claim 4.

e. Independent Claim 5: Comparison of Claim 5 with Kellock

Claim 5 recites as follows:

“ An image editing method, comprising:

in an image editing apparatus having a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name, a video effect recording device which records a range of image related information associated with a video effect during image switching, a comparison device which compares image related information about a first image with image related information about a second image, a video effect selection device which reads from the video effect recording device a video effect depending on a comparison result, an image joining device which joins a first image with a second image by applying the video effect to the first and second images, and an output device which outputs the joined images:

reading first image related information about a first image recorded in the

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recording device and second image related information about a second image recorded in the recording device, and comparing the image related information about the first and second images, in the comparison device;

reading in the video effect selection device from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison;

reading the first and second images recorded in the recording device, and automatically joining the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time, in the image joining device; and

outputting in the output device the joined images."

Similarly to claim 1, claim 5 recites "*reading in the video effect selection device from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison*" and "*reading the first and second images recorded in the recording device, and automatically joining the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time, in the image joining device*".

Appellant notes, therefore, that these elements are similar to the elements discussed above with respect to claim 1. Therefore, the arguments set forth above with respect to claim 1 are incorporated herein by reference.

As discussed above with respect to claim 1, Kellock does not teach or suggest these elements of claim 5.

Therefore, as in claim 1, even if claim 5 is given the broadest reasonable interpretation, there is at least one element in claim 5 that is not found, either expressly or inherently, in the

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cited reference.

In view of all of the foregoing, Appellant respectfully submits that the Examiner's rejection is erroneous as a matter of fact and law. Thus, the Board is respectfully requested to remove this rejection of claim 5.

3. The Prior Art Rejections of Dependent Claims 6-18: Comparison of the Dependent Claims 6-18 with Kellock

While independent claims 1-5 are directed to statutory subject matter, as discussed above, dependent claims 6-18 define similar statutory subject matter separately and distinctly from the independent claims, as these dependent claims recite additional elements clearly providing useful, concrete and tangible results.

a. Claim 6

Claim 6 depends from claim 1 and recites "*wherein said plurality of images recorded in said recording device comprises an image file including at least one of a primary image of a moving picture in an image recording format, a thumbnail image for listing the primary image, and image related information about the primary image*", (e.g., see Application at Figure 2; page 9, lines 12-23).

The Examiner alleges that "*Kellock et al. teach all the limitations of the parent claim. Official notice is taken that the concept of having an image file including at least one of a primary image of a moving picture in an image recording format, a thumbnail image for listing a primary image, and image related information about a primary image is well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have an image file including at least a thumbnail for representing a primary image because it would be easier and faster for the user to recognize the video segment*".

However, nowhere does Kellock teach or suggest a plurality of images that include an image file including at least one of a primary image of a moving picture in an image recording format, a thumbnail image for listing the primary image, and image related information about the

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primary image.

Moreover, Appellant notes that the standard for taking Official Notice is not whether a feature is simply "well known in the art", but instead whether the feature is "capable of **instant and unquestionable** demonstration as being well-known". For example, it may be proper for an Examiner to take official notice that the boiling point of water is 100°C, or that $\text{Force} = \text{mass} \times \text{acceleration}$.

However, the features in claim 6 are not well known like, for example, the boiling point of water. Therefore, Appellant respectfully submits that the alleged facts of which the Examiner attempts to take Official Notice are not capable of instant and unquestionable demonstration as being well-known. Indeed, Appellant would point out if the Examiner could take Official Notice of these features, the Examiner could take Official Notice of about 90% of all claimed subject matter.

Therefore, it is clearly not appropriate for the Examiner to attempt to take "Official Notice" of these alleged facts (e.g., see MPEP §2144.03). Further, the Examiner has failed to provide Appellant with any documentary evidence to support her position in this regard.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 6.

b. Claim 7

Claim 7 depends from claim 6 and recites "*wherein a portion of said image file which stores said image related information comprises at least one of a capturing date on which the primary image was captured, a capturing time, a name of said image editing apparatus, a frame of said captured image, information about a zoom position when said image was captured, and information relating to a user of said image editing apparatus*", (e.g., see Application at Figure 2; page 9, lines 12-23).

The Examiner alleges that "*Kellock et al. disclose that the video descriptors 111 embedded within or linked to the input video or image comprise at least a shooting date and time, a focal distance, and a GPS location (see paragraph [0062]).*"

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However, nowhere in paragraph [0062] or anywhere else does Kellock teach or suggest that a portion of an image file which stores image related information includes at least one of a capturing date on which the primary image was captured, a capturing time, a name of said image editing apparatus, a frame of said captured image, information about a zoom position when the image was captured, and information relating to a user of the image editing apparatus.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 7.

c. Claim 8

Claim 8 depends from claim 6 and recites "*wherein said image recording format comprises one of Motion-JPEG format and MPEG format*", (e.g., see Application at Figure 2; page 9, lines 12-23).

The Examiner alleges that "*official notice is taken that recording still and motion images using JPEG and MPEG formats, respectively, is old and well known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use JPEG and MPEG compression formats because they are ISO/IEC standards and, therefore, implementation is known to be effective*".

However, nowhere does Kellock teach or suggest an image recording format that includes one of Motion-JPEG format and MPEG format.

Moreover, Appellant notes that the standard for taking Official Notice is not whether a feature is simply "well known in the art", but instead whether the feature is "capable of **instant and unquestionable** demonstration as being well-known". For example, it may be proper for an Examiner to take official notice that the boiling point of water is 100°C, or that $\text{Force} = \text{mass} \times \text{acceleration}$.

However, the features in claim 8 are not well known like, for example, the boiling point of water. Therefore, Appellant respectfully submits that the alleged facts of which the Examiner attempts to take Official Notice are not capable of instant and unquestionable demonstration as being well-known. Indeed, Appellant would point out if the Examiner could take Official Notice of these features, the Examiner could take Official Notice of about 90% of all claimed subject

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matter.

Therefore, it is clearly not appropriate for the Examiner to attempt to take "Official Notice" of these alleged facts (e.g., see MPEP §2144.03). Further, **the Examiner has failed to provide Appellant with any documentary evidence to support her position in this regard.**

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 8.

d. Claim 9

Claim 9 depends from claim 1 and recites "*wherein said video effect selection device further reads from the video effect recording device:*

a video effect according to image related information similar in a predetermined range when there is image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison; and

a video effect according to no matching image related information when there is no matching image related information between the image related information about the first and second images as a result of the comparison", (e.g., see Application at page 10, lines 18-27; page 12, line 13-page 12, line 2).

The Examiner alleges that "*Kellock et al. teach that said video effect selection device further reads from the video effect recording device: a video effect according to image related information similar in a predetermined range when there is image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison; and a video effect according to no matching image related information when there is no matching image related information between the image related information about the first and second images as a result of the comparison. For example, Kellock et al. teach using slow dissolves transitions for segments of low brightness, and other type of transition for segments of high brightness (see paragraph [106])*".

However, nowhere in paragraph [106] does Kellock teach or suggest a video effect selection device that reads from the video effect recording device: **a video effect according to image related information similar in a predetermined range** when there is image related information similar in a predetermined range between the image related information about the

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first and second images as a result of the comparison; and a **video effect according to no matching image related information** when there is no matching image related information between the image related information about the first and second images as a result of the comparison.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 9.

e. Claim 10

Claim 10 depends from claim 1 and recites "*further comprising: an input device comprising a mode switch for putting said image editing apparatus in an image editing mode*", (e.g., see Application at page 11, lines 9-14).

The Examiner alleges that "*Kellock et al. teach all the limitations of the parent claim. Kellock et al. also disclose that the invention may be embodied within a computer, a PDA, a still camera and a video camera (see paragraph [0020]). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a mode switch for putting said image editing apparatus in an image editing mode because, since computers, PDAs, still cameras and video cameras operate in modes other than image editing modes, any of these embodiments would require a way to change modes to operate as an image editor*".

However, nowhere in paragraph [0020] does Kellock teach or suggest an input device comprising a mode switch for putting an image editing apparatus in an image editing mode.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 10.

f. Claim 11

Claim 11 depends from claim 1 and recites "*further comprising: an input device for selecting images to be edited from among said plurality of images*", (e.g., see Application at page 11, lines 9-14).

The Examiner alleges that "*Kellock et al. disclose an input device, i.e. a GUI, for selecting images to be edited from among said plurality of images (see paragraphs [0190],*

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[0195])".

However, nowhere in paragraphs [0190] or [0195] does Kellock teach or suggest an input device for selecting images to be edited from among a plurality of images.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 11.

g. Claim 12

Claim 12 depends from claim 11 and recites "*further comprising: a display device for displaying a list of images, wherein a user using said input device selects plural images from said displayed list of images to be edited*", (e.g., see Application at page 11, lines 13-14; page 13, lines 5-11).

The Examiner alleges that "*Kellock et al. disclose a display device, i.e. an audio-visual monitor (see paragraph [0075], lines 7-9). Kellock et al., however, do not explicitly teach displaying a list of images, wherein a user using said display device selects plural images from said displayed list of images to be edited. Official notice is taken that selecting plural images from a displayed list of images is well-known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to display a list of images, wherein a user using selects plural images from said displayed list of images because the user herself can select the images she would like to edit, minimizing unnecessary or unwanted editions*".

However, nowhere in paragraph [0075] does Kellock teach or suggest a display device for displaying a list of images, wherein a user using the input device selects plural images from the displayed list of images to be edited.

Moreover, Appellant notes that the standard for taking Official Notice is not whether a feature is simply "well known in the art", but instead whether the feature is "capable of **instant and unquestionable** demonstration as being well-known". For example, it may be proper for an Examiner to take official notice that the boiling point of water is 100°C, or that Force=mass x acceleration.

However, the features in claim 6 are not well known like, for example, the boiling point of water. Therefore, Appellant respectfully submits that the alleged facts of which the Examiner

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attempts to take Official Notice are not capable of instant and unquestionable demonstration as being well-known. Indeed, Appellant would point out if the Examiner could take Official Notice of these features, the Examiner could take Official Notice of about 90% of all claimed subject matter.

Therefore, it is clearly not appropriate for the Examiner to attempt to take "Official Notice" of these alleged facts (e.g., see MPEP §2144.03). Further, **the Examiner has failed to provide Appellant with any documentary evidence to support her position in this regard.**

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 12.

h. Claim 13

Claim 13 depends from claim 1 and recites "*wherein said video effect recording device comprises a table including a list of said image related information and a video effect associated with said image related information*", (e.g., see Application at page Figures 4 and 5).

The Examiner alleges that "*Kellock et al. teach that the style information recorded in a recording medium comprises a table including a list of said image related information, e.g. image brightness level, and a video effect associated with said image related information, e.g. transition effect type (e.g., see table 1 on page 7)*".

However, nowhere in Table 1 on page 7 does Kellock teach or suggest a video effect recording device includes a table including a list of the image related information and a video effect associated with the image related information.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 13.

i. Claim 14

Claim 14 depends from claim 13 and recites "*wherein said image related information is included in said list in order of priority*", (e.g., see Application at Figure 6; page 14, lines 3-5).

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The Examiner alleges that "*Kellock et al. teach all the limitations of the parent claim. Kellock et al., however, fail to explicitly teach that said image related information is included in said list in order of priority. Official notice is taken that prioritizing recorded image related information is well-known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to prioritize recorded image related information by user preference because it would increase the success of the editing process since the user's preferences are taken into account*".

However, nowhere does Kellock teach or suggest that image related information is included in a list in order of priority.

Moreover, Appellant notes that the standard for taking Official Notice is not whether a feature is simply "well known in the art", but instead whether the feature is "capable of **instant and unquestionable** demonstration as being well-known". For example, it may be proper for an Examiner to take official notice that the boiling point of water is 100°C, or that $\text{Force} = \text{mass} \times \text{acceleration}$.

However, the features in claim 6 are not well known like, for example, the boiling point of water. Therefore, Appellant respectfully submits that the alleged facts of which the Examiner attempts to take Official Notice are not capable of instant and unquestionable demonstration as being well-known. Indeed, Appellant would point out if the Examiner could take Official Notice of these features, the Examiner could take Official Notice of about 90% of all claimed subject matter.

Therefore, it is clearly not appropriate for the Examiner to attempt to take "Official Notice" of these alleged facts (e.g., see MPEP §2144.03). Further, the Examiner has failed to provide Appellant with any documentary evidence to support her position in this regard.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 14.

j. Claim 15

Claim 15 depends from claim 13 and recites "*wherein said comparison device compares first image related information for said first and second images, wherein if said first image*

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related information for said first image matches said first image information for said second image, said video effect selection device selects said video effect associated with said first image related information and terminates a video effect selection process, and wherein if said first image related information for said first image does not match said first image related information for said second image, said comparison device compares second image related information for said first and second images", (e.g., see Application at Figure 6; page 14, lines 3-5).

The Examiner alleges that "*Kellock et al. fail to explicitly teach that said comparison device compares first image related information for said first and second images, wherein if said first image related information for said first image matches said first image information for said second image, said video effect selection device selects said video effect associated with said first image related information and terminates a video effect selection process, and wherein if said first image related information for said first image does not match said first image information for said second image, said comparison device compares second image related information for said first and second images.*

Official notice is taken that prioritizing recorded image related information is well-known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to prioritize recorded image related information by user preference and selecting a video effect on the basis of said prioritization because it would increase the success of the editing process since the user's preferences are taken into account".

However, nowhere does Kellock teach or suggest a comparison device that compares first image related information for the first and second images, and if the first image related information for the first image matches the first image information for the second image, the video effect selection device selects the video effect associated with the first image related information and terminates a video effect selection process, and if the first image related information for the first image does not match the first image related information for the second image, the comparison device compares second image related information for the first and second images.

Moreover, Appellant notes that the standard for taking Official Notice is not whether a feature is simply "well known in the art", but instead whether the feature is "**capable of instant and unquestionable demonstration as being well-known**". For example, it may be proper for an

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Examiner to take official notice that the boiling point of water is 100°C, or that $\text{Force} = \text{mass} \times \text{acceleration}$.

However, the features in claim 6 are not well known like, for example, the boiling point of water. Therefore, Appellant respectfully submits that the alleged facts of which the Examiner attempts to take Official Notice are not capable of instant and unquestionable demonstration as being well-known. Indeed, Appellant would point out if the Examiner could take Official Notice of these features, the Examiner could take Official Notice of about 90% of all claimed subject matter.

Therefore, it is clearly not appropriate for the Examiner to attempt to take "Official Notice" of these alleged facts (e.g., see MPEP §2144.03). Further, the Examiner has failed to provide Appellant with any documentary evidence to support her position in this regard.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 15.

k. Claim 16

Claim 16 depends from claim 15 and recites "*wherein said second image related information has a lower priority than said first image related information*", (e.g., see Application at Figure 6; page 14, lines 3-5).

The Examiner alleges that "*Kellock et al. fail to explicitly teach that said comparison device compares first image related information for said first and second images, wherein if said first image related information for said first image matches said first image information for said second image, said video effect selection device selects said video effect associated with said first image related information and terminates a video effect selection process, and wherein if said first image related information for said first image does not match said first image information for said second image, said comparison device compares second image related information for said first and second images.*"

Official notice is taken that prioritizing recorded image related information is well-known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to prioritize recorded image related information by user preference and selecting a video effect on the basis of said prioritization because it would increase the success of the editing process since the user's preferences are taken into account".

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However, nowhere does Kellock teach or suggest that second image related information has a lower priority than first image related information.

Moreover, Appellant notes that the standard for taking Official Notice is not whether a feature is simply "well known in the art", but instead whether the feature is "capable of **instant and unquestionable** demonstration as being well-known". For example, it may be proper for an Examiner to take official notice that the boiling point of water is 100°C, or that $\text{Force} = \text{mass} \times \text{acceleration}$.

However, the features in claim 6 are not well known like, for example, the boiling point of water. Therefore, Appellant respectfully submits that the alleged facts of which the Examiner attempts to take Official Notice are not capable of instant and unquestionable demonstration as being well-known. Indeed, Appellant would point out if the Examiner could take Official Notice of these features, the Examiner could take Official Notice of about 90% of all claimed subject matter.

Therefore, it is clearly not appropriate for the Examiner to attempt to take "Official Notice" of these alleged facts (e.g., see MPEP §2144.03). Further, the Examiner has failed to provide Appellant with any documentary evidence to support her position in this regard.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 16.

I. Claim 17

Claim 17 depends from claim 1 and recites "*wherein said image joining device joins said images by automatically applying said video effect during image switching*", (e.g., see Application at page 12, lines 9-12).

The Examiner alleges that "*Kellock et al. teach that said image joining device joins said images by automatically applying said video effect during image switching, i.e. applying a transitional effect within a media timeline wherein a first image is ending and a second image is beginning (e.g., see figure 2)*".

However, nowhere in Figure 2 or anywhere else, does Kellock teach or suggest an image joining device that joins images by automatically applying a video effect during image

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switching.

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 17.

m. Claim 18

Claim 18 depends from claim 1 and recites "*wherein said image editing apparatus comprises one of an electronic camera, a personal computer, a mobile telephone, and a personal digital assistant (PDA)*", (e.g., see Application at page 9, lines 6-11).

The Examiner alleges that "*Kellock et al. teach that said image-editing apparatus comprises one of an electronic camera, a personal computer, and a personal digital assistant (PDA) (see paragraph [0020] and [0288]).*"

However, nowhere in paragraph [0020] or [0288] does Kellock teach or suggest an image editing apparatus as in the claimed invention that includes one of an electronic camera, a personal computer, a mobile telephone, and a personal digital assistant (PDA).

Therefore, Appellant respectfully submits that Kellock does not teach or suggest this limitation. Therefore, the Board is respectfully requested to remove this rejection of claim 18.

Therefore, Appellant respectfully submits that each of dependent claims 6-18, like independent claims 1-5, include at least one element which is not taught or suggested by the cited references, or any combination of the cited references.

VIII. CONCLUSION

In view of the foregoing, Appellant submits that claims 1-18, all the claims presently pending in the application, are patentably distinct from the prior art of record and in condition for allowance. Thus, the Board is respectfully requested to remove the rejections of claims 1-18.

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Please charge any deficiencies and/or credit any overpayments necessary to enter this paper to Attorney's Deposit Account number 50-0481.

Dated: 4/15/08

Respectfully submitted,



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CLAIMS APPENDIX

1. (Previously presented) An image editing apparatus which joins a plurality of images in time, comprising:

a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name;

a video effect recording device which records image related information associated with a video effect during image switching;

a comparison device which reads first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first and second images;

a video effect selection device which reads from the video effect recording device a video effect according to matching image related information between the image related information about the first and second images as a result of the comparison;

an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time; and

an output device which outputs the joined images.

2. (Previously presented) An image editing apparatus which joins a plurality of images in time, comprising:

a recording medium loading unit which loads a recording device for recording a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name;

a video effect recording device which records a range of image related information

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associated with a video effect during image switching;

a comparison device which reads first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first and second images;

a video effect selection device which reads from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison;

an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time; and

an output device which outputs the joined images.

3. (Previously presented) An image editing apparatus which joins a plurality of images in time, comprising:

a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name;

a video effect recording device which records a range of image related information associated with a video effect during image switching;

a comparison device which reads first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and compares the image related information about the first and second images;

a video effect selection device which reads from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison;

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an image joining device which reads the first and second images recorded in the recording device, and automatically joins the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time; and
an output device which outputs the joined images.

4. (Previously presented) A programmable storage medium tangibly embodying a program of machine-readable instructions executable by a digital processing apparatus to perform an image editing method, said method comprising:

in an image editing apparatus having a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name, a video effect recording device which records a range of image related information associated with a video effect during image switching, a comparison device which compares image related information about a first image with image related information about a second image, a video effect selection device which reads from the video effect recording device a video effect depending on a comparison result, an image joining device which joins a first image with a second image by applying the video effect to the first and second images, an output device which outputs the joined images, and an information processing device which controls the recording device, the video effect recording device, the comparison device, the video effect selection device, the image joining device, and the output device:

reading in the comparison device first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and comparing the image related information about the first and second images;

reading in the video effect selection device from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison;

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reading the first and second images recorded in the recording device, and automatically joining in the image joining device the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time; and outputting in the output device the joined images.

5. (Previously presented) An image editing method, comprising:

in an image editing apparatus having a recording device which records a plurality of images associated with image related information including at least one of a shooting date and time, a shooting condition, a shooting place, and a user name, a video effect recording device which records a range of image related information associated with a video effect during image switching, a comparison device which compares image related information about a first image with image related information about a second image, a video effect selection device which reads from the video effect recording device a video effect depending on a comparison result, an image joining device which joins a first image with a second image by applying the video effect to the first and second images, and an output device which outputs the joined images:

reading first image related information about a first image recorded in the recording device and second image related information about a second image recorded in the recording device, and comparing the image related information about the first and second images, in the comparison device;

reading in the video effect selection device from the video effect recording device a video effect according to image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison;

reading the first and second images recorded in the recording device, and automatically joining the images by applying the video effect read by the video effect selection device to a portion in which the images are to be joined in time, in the image joining device; and outputting in the output device the joined images.

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6. (Previously presented) The image editing apparatus of claim 1, wherein said plurality of images recorded in said recording device comprises an image file including at least one of a primary image of a moving picture in an image recording format, a thumbnail image for listing the primary image, and image related information about the primary image.
7. (Previously presented) The image editing apparatus of claim 6, wherein a portion of said image file which stores said image related information comprises at least one of a capturing date on which the primary image was captured, a capturing time, a name of said image editing apparatus, a frame of said captured image, information about a zoom position when said image was captured, and information relating to a user of said image editing apparatus.
8. (Previously presented) The image editing apparatus of claim 6, wherein said image recording format comprises one of Motion-JPEG format and MPEG format.
9. (Previously presented) The image editing apparatus of claim 1, wherein said video effect selection device further reads from the video effect recording device:
 - a video effect according to image related information similar in a predetermined range when there is image related information similar in a predetermined range between the image related information about the first and second images as a result of the comparison; and
 - a video effect according to no matching image related information when there is no matching image related information between the image related information about the first and second images as a result of the comparison.
10. (Previously presented) The image editing apparatus of claim 1, further comprising:
 - an input device comprising a mode switch for putting said image editing apparatus in an image editing mode.

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11. (Previously presented) The image editing apparatus of claim 1, further comprising:
an input device for selecting images to be edited from among said plurality of images.
12. (Previously presented) The image editing apparatus of claim 11, further comprising:
a display device for displaying a list of images,
wherein a user using said input device selects plural images from said displayed list of
images to be edited.
13. (Previously presented) The image editing apparatus of claim 1, wherein said video effect
recording device comprises a table including a list of said image related information and a video
effect associated with said image related information.
14. (Previously presented) The image editing apparatus of claim 13, wherein said image
related information is included in said list in order of priority.
15. (Previously presented) The image editing apparatus of claim 13, wherein said comparison
device compares first image related information for said first and second images,
wherein if said first image related information for said first image matches said first
image information for said second image, said video effect selection device selects said video
effect associated with said first image related information and terminates a video effect selection
process, and
wherein if said first image related information for said first image does not match said
first image related information for said second image, said comparison device compares second
image related information for said first and second images.
16. (Previously presented) The image editing apparatus of claim 15, wherein said second
image related information has a lower priority than said first image related information.

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17. (Previously presented) The image editing apparatus of claim 1, wherein said image joining device joins said images by automatically applying said video effect during image switching.

18. (Previously presented) The image editing apparatus of claim 1, wherein said image editing apparatus comprises one of an electronic camera, a personal computer, a mobile telephone, and a personal digital assistant (PDA).

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EVIDENCE APPENDIX

Not Applicable

RELATED PROCEEDINGS APPENDIX

Not Applicable